

APPEAL NO. 021060
FILED JUNE 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 5, 2002. The hearing officer determined that the compensable injury sustained by the appellant (claimant) on _____, does not extend to and include the following: disc bulges at C4-5, C5-6, C6-7, or C7-T1; a herniated disc at L5-S1; and left side tinnitus. On appeal, the claimant contends that this decision is null and void, as it resolves issues that were neither raised at the benefit review conference (BRC) nor agreed to by the parties at the hearing. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant contends on appeal that the only issue certified for resolution, as a result of the BRC proceedings, was whether the claimant sustained a compensable injury to his cervical and lumbar spine. Based on this argument, the claimant urges that it was inappropriate for the hearing officer to determine the compensability of specific diagnoses involving those body parts. The record reflects that the hearing officer not only resolved the exact issue specified in the BRC report, but that in addition, the claimant agreed to this issue at the hearing. Consequently, we perceive no error in the hearing officer's resolution of the following issue: does the compensable injury of _____, extend to and include a disc bulge at C4-5, C5-6, C6-7, or C7-T1; a herniated disc at L5-S1; and left side tinnitus?

Extent of injury is a factual determination for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We have reviewed the matters complained of on appeal and conclude that the hearing officer's decision is supported by sufficient evidence.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge